

United States District Court  
Central District of California

MUNCHKIN, INC.,

Plaintiff,

v.

LUV N' CARE, LTD.; ADMAR  
INTERNATIONAL, INC.,

Defendants.

Case No. 2:13-cv-07228-ODW(AGRx)

**CLAIM-CONSTRUCTION ORDER**

**I. INTRODUCTION**

In this patent-infringement suit, the Court concerns itself with the “technology” of baby blankets—specifically, baby blankets designed to aid an infant in teething. The patent-in-suit is U.S. Patent No. 6,292,962 (the ’962 Patent), which Plaintiff Munchkin, Inc. asserts against Defendants Luv N’ Care, Ltd. and Admar International, Inc. (collectively, “LNC”). As a first step in determining infringement, the Court must construe the essential terms of the patent. After considering the parties’ claim-construction briefs, the Court finds oral argument unnecessary and construes the disputed claim terms as set forth below. Fed. R. Civ. P. 78; L.R. 7-15.

**II. BACKGROUND**

Munchkin initiated this patent-infringement action against LNC on September 30, 2013. (ECF No.1.) In responding to the Complaint, LNC has asserted several defenses, including invalidity and non-infringement. (ECF No. 16.)

1 Munchkin is the assignee of the '962 Patent titled "Infant Blanket with  
2 Teether/Pacifier." Claims 1, 4, 5, and 8 of the '962 Patent are at issue in this action.  
3 (Munchkin Br. 2:25–27.) Claims 1 and 4 are apparatus claims, while claims 5 and 8  
4 are method claims. The asserted claims are directed to the design and function of a  
5 small blanket or towel with an attached oral element for an infant to use when  
6 teething. (See '962 Patent 1:42–45.)

7 The parties dispute the construction of three terms: (1) "corner";  
8 (2) "permanently secured"; and (3) "teething element." Claim 1 is illustrative of the  
9 disputed terms and reads as follows:

10 1. An infant product, comprising:

11 a substantially two-dimensional flexible fabric material having a surface  
12 area that is greater than about 25 square inches, said flexible fabric  
13 material having a front side, a back side and a plurality of side edges  
14 that intersect so as to define at least two **corners**;

15 a first **teething element** that is **permanently secured** to a first of said at  
16 least **corners**, said first **teething element** being fabricated from a  
17 material selected from the group consisting of plastic and rubber, said  
18 first **teething element** having at least one non-smooth textured  
19 surface thereon and being fabricated from a non-toxic material and  
20 being sized and dimensioned to be comfortably inserted and partially  
21 retained within an infant's mouth for teething purposes; and

22 a second **teething element** that is **permanently secured** to a second of  
23 said at least **corners** and that is separate from said first **teething**  
24 **element**, said second **teething element** also being fabricated from a  
25 material selected from the group consisting of plastic and rubber, said  
26 second **teething element** also having at least one non-smooth textured  
27 surface thereon and also being fabricated from a non-toxic material and

28       // /

1 being sized and dimensioned to be comfortably inserted and partially  
 2 retained within an infant's mouth for teething purposes.

3 ('962 Patent 4:50–5:8 (emphasis added).)

### 4 III. LEGAL STANDARD

5 The purpose of claim construction is to determine the meaning and scope of the  
 6 patent claims alleged to be infringed. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech.*  
 7 *Co., Ltd.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008). Claim construction is a question of  
 8 law to be decided by the court. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967,  
 9 979 (Fed. Cir. 1995).

10 In general, claim terms are “given their ordinary and customary meaning as  
 11 understood by a person of ordinary skill in the art when read in the context of the  
 12 specification and prosecution history.” *Thorner v. Sony Computer Entm't Am. LLC*,  
 13 669 F.3d 1362, 1365 (Fed. Cir. 2012) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303,  
 14 1313 (Fed Cir. 2005) (en banc)).

15 “[T]he claims themselves provide substantial guidance as to the meaning of  
 16 particular claim terms.” *Phillips*, 415 F.3d at 1314. But claims “must be construed in  
 17 light of the appropriate context in which the claim term is used.” *Aventis Pharm. Inc.*  
 18 *v. Amino Chems. Ltd.*, 715 F.3d 1363, 1373 (Fed. Cir. 2013). This is why the  
 19 specification is “highly relevant” in claim construction and the “single best guide” for  
 20 construing ambiguous claim terms. *Phillips*, 415 F.3d at 1315. Nevertheless, a court  
 21 must be wary of “improperly importing a limitation from the specification into the  
 22 claims.” *Retractable Techs., Inc. v. Becton*, 653 F.3d 1296, 1305 (Fed. Cir. 2011).  
 23 Also relevant to claim construction is a patent’s prosecution history, although it “often  
 24 lacks the clarity of the specification and thus is less useful for claim construction  
 25 purposes.” *Phillips*, 415 F.3d at 1317.

26 In addition, courts may consider extrinsic evidence in claim construction. *Id.*  
 27 For example, dictionaries may aid the court “in determining the meaning of particular  
 28 terminology to those of skill in the art.” *Id.* at 1318. But while extrinsic evidence can

1 shed light on claim meaning, it is “less significant than the intrinsic record in  
 2 determining the legally operative meaning of claim language.” *Id.* (internal quotation  
 3 marks omitted).

4 There are two circumstances under which a court will not give a term its plain  
 5 and ordinary meaning. First, a patentee can depart from the plain and ordinary  
 6 meaning by acting as his own lexicographer. *Thorner*, 669 F.3d at 1365. To act as his  
 7 own lexicographer, the patentee “must clearly set forth a definition of the disputed  
 8 claim term other than its plain and ordinary meaning.” *Id.* “It is not enough for a  
 9 patentee to simply disclose a single embodiment or use a word in the same manner in  
 10 all embodiments, the patentee must clearly express an intent to redefine the term.” *Id.*  
 11 (internal quotation marks omitted). An “‘implied’ redefinition must be so clear that it  
 12 equates to an explicit one.” *Id.* at 1368. Second, a patentee can depart from the plain  
 13 and ordinary meaning by clearly “disavow[ing] the full scope of a claim term either in  
 14 the specification or during prosecution.” *Id.* at 1365. “The patentee may demonstrate  
 15 intent to deviate from the ordinary and accustomed meaning of a claim term by  
 16 including in the specification expressions of manifest exclusion or restriction,  
 17 representing a clear disavowal of claim scope.” *Teleflex, Inc. v. Ficosa N. Am. Corp.*,  
 18 299 F.3d 1313, 1325 (Fed. Cir. 2002).

#### 19                          IV. DISCUSSION

20                          Munchkin puts forth proposed constructions for the three disputed claim terms,  
 21 relying solely on the language of the claims and the patent’s specification. LNC, on  
 22 the other hand, argues that “no construction is necessary” and the disputed terms  
 23 should be given their plain and ordinary meaning. LNC offers dictionary definitions  
 24 of the words in each disputed claim term to support adoption of the terms’ plain and  
 25 ordinary meanings.

##### 26                          A. “corner”

27                          Munchkin argues that the proper construction of “corner” is “a portion of the  
 28 flexible fabric material containing the intersection of two or more of the material’s

1 side edges.” (Munchkin Br. 5:11–12.) According to Munchkin, the term “corner” is  
2 used throughout the asserted claims to not only denote where the edges of the blanket  
3 come to a point, but to also describe where the invention’s teething element attaches  
4 to the blanket. (*Id.* at 5:26–6:9.) Munchkin then turns to the specification to argue  
5 that the teething element attaches to more than a single point where the side edges  
6 meet; it can instead be attached along the side edges extending out from that point as  
7 well as inward from that point. (*Id.* at 6:10–7:10; ’962 Patent, Figs. 1–6.) Given that  
8 the teething element does not need to be attached to the single point where the side  
9 edges actually meet, Munchkin contends that “corner” is used in the claims “to  
10 reference a broader portion of the flexible fabric material.” (*Id.* at 7:1–22.)

11 On the other hand, LNC opposes Munchkin’s proposed construction of “corner”  
12 because the ’962 Patent states that claim terms are to be understood according to their  
13 “broad general meaning” and at least one embodiment in the specification contradicts  
14 Munchkin’s rationale for its proposed construction. (LNC Br. 1–2:21; ’962  
15 Patent 4:41–49, Fig. 7.) In Figure 7 of the ’962 Patent, the teething element appears  
16 to attach in the center of the blanket and nowhere near where the side edges of the  
17 blanket meet at a rounded edge. (’962 Patent, Fig. 7.) Instead, LNC asks the Court to  
18 adopt the plain and ordinary meaning of “corner,” which the Merriam-Webster  
19 Dictionary defines as “the point or area where two lines, edges, or sides of something  
20 meet.” (LNC Br. 3:1–11.)

21 After reviewing the parties’ arguments, the Court finds no reason to deviate  
22 from the plain and ordinary meaning of “corner.” The Court further finds no reason to  
23 rely on a dictionary, as the term is a common word familiar to all English speakers.

24 Munchkin relies on a selective reading of the patent specification for its  
25 proposed construction that is based on “corner” serving two purposes—as the location  
26 where the edges meet and as the location where the teething element attaches. But  
27 Figure 7 of the ’962 Patent clearly contradicts Munchkin’s reading of the  
28 specification:

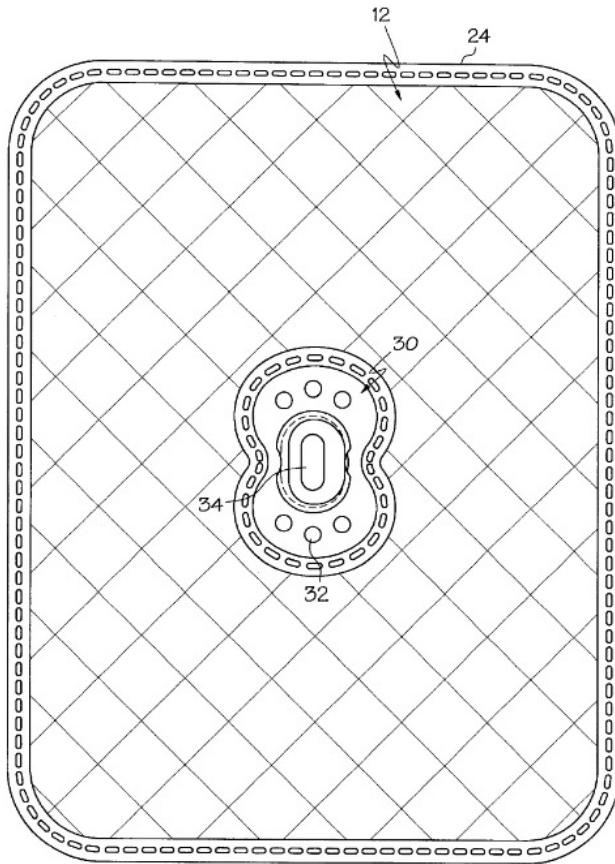


FIG. 7

Moreover, Munchkin cannot point to anywhere in the specification that shows a clear disavowal or redefinition of “corner” to persuade the Court to overcomplicate the simple term “corner” and adopt a construction other than its plain and ordinary meaning. *See Thorner*, 669 F.3d at 1365. In addition, Munchkin’s main concern with construction of the term “corner” is that it should encompass more than a single point where the edges meet. Yet the parties agree that the meaning of “corner” includes the point *or area* where the edges meet as evidenced by LNC’s citation to the term’s lay dictionary definition.

For the reasons discussed above, the Court finds that the term “corner” shall have its plain and ordinary meaning.

#### B. “permanently secured”

Munchkin proposes that the Court construe the term “permanently secured” to mean “directly affixed so as to overlap at least a portion of that to which it is affixed

1 and not be easily de-attachable without the use of tools.” (Munchkin Br. 5:12–14.)  
 2 According to Munchkin, the specification informs the meaning of the term and all of  
 3 the descriptions of the embodiments reveal that the teething element must necessarily  
 4 overlap the material. (*Id.* at 7:24–9:19.) Munchkin also relies on descriptions of  
 5 embodiments where the teething element is detachable from the blanket. (*Id.*  
 6 at 9:19–28; ’962 Patent 3:40–45 (“The pacifier . . . can be easily attached to the  
 7 flexible material and easily de-attached from the flexible material (without the use of  
 8 tools) by snapping the snap into the snap retainer opening.”).) Munchkin’s contention  
 9 is that a teething element that is easily detachable is the opposite of one that is  
 10 “permanently secured”; thus, the Court should adopt the language of the specification  
 11 describing an easily detachable teething element in the negative—i.e., “not be easily  
 12 de-attachable without the use of tools.”

13 The Court finds that Munchkin’s proposed construction of “permanently  
 14 secured” is problematic. With respect to the necessity that the teething element  
 15 “overlap” the material, Munchkin impermissibly seeks to read the embodiments into  
 16 the claim term. *See Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed.  
 17 Cir. 2014) (“[W]e do not read limitations from the embodiments in the specification  
 18 into the claims.”); *Thorner*, 669 F.3d at 1368 (“[D]isclosing embodiments that all use  
 19 the term the same way is not sufficient to redefine a claim term.”). The ’962 Patent  
 20 contains “no words of manifest exclusion or restriction” as it relates to the disputed  
 21 term “permanently secured” or the embodiments described in the specification. *Hill-*  
*Rom Servs.*, 755 F.3d at 1372. Moreover, Munchkin attempts to define the modifier  
 23 “permanently” by pointing to what it contends is the opposite of “permanent” in the  
 24 specification, but this is far from sufficient to demonstrate that the patentee was acting  
 25 as his own lexicographer. *See CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359,  
 26 1366 (Fed. Cir. 2002) (stating that a patentee “must clearly set forth a definition of the  
 27 disputed claim term”).

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1       The Court cannot find the word “permanent” or the disputed term “permanently  
 2 secured” anywhere in the specification. As LNC argues in opposition to Munchkin’s  
 3 proposed construction, this is strong evidence that the term “permanently secured” has  
 4 no specialized or alternative meaning. *See Thorner*, 669 F.3d at 1365–66 (holding  
 5 that a patentee must clearly express an intent to redefine a term or clearly disavow the  
 6 ordinary meaning of a term and the claim scope). The Court thus adopts the plain and  
 7 ordinary meaning of the term “permanently secured.”

8 **C. “teething element”**

9       Unlike the previous two disputed claim terms, Munchkin’s arguments in favor  
 10 of its proposed construction of “teething element” are more persuasive. Munchkin  
 11 proposes that the term be construed as “an element that is: separate from the flexible  
 12 fabric material; made from a non-toxic material; and sized and dimensioned to be  
 13 comfortably inserted and partially retained within an infant’s mouth for teething  
 14 purposes.” (Munchkin Br. 5:14–16.)

15       Munchkin contends that the patentee chose to be a lexicographer, and the ’962  
 16 Patent specification acts as a dictionary. (*Id.* at 10:7–16); *see also Vitronics Corp. v.*  
*17 Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The specification reads,  
 18 “[t]he term ‘teething element’ is meant to be broadly interpreted to include all  
 19 elements made from a non-toxic material, sized and dimensioned to be comfortably  
 20 inserted and partially retained within an infant’s mouth for teething purposes.” (’962  
 21 Patent 3:2–6.) According to Munchkin, it is also clear that the “teething element” is  
 22 separate and apart from the flexible fabric of the blanket itself. (Munchkin  
 23 Br. 10:17–11:8.) The claims themselves describe the teething element as apart from  
 24 the fabric, requiring it to be attached or “permanently secured” to the fabric. (*See,*  
 25 *e.g.*, ’962 Patent 4:50–5:9.) Moreover, in describing the invention, the patent’s  
 26 abstract and summary refer to two separate parts—“a small blanket or towel having  
 27 the oral element attached directly thereto.” (*Id.* at 1:42–45.) Four of the patent figures  
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1 also depict the “teething element” alone, entirely separate from the flexible fabric.  
 2 (*Id.* at Figs. 2–5.)

3 In opposing Munchkin’s proposed construction, LNC once again asks the Court  
 4 to simply adopt the plain and ordinary meaning of “teething element.” LNC argues  
 5 that the patentee was not engaging in lexicography in the specification, but merely  
 6 indicating that the term should be interpreted broadly. (LNC Br. 4:18–5:3.) LNC  
 7 then turns to the Merriam-Webster Dictionary definitions of the words “teething” and  
 8 “element” to argue that the proper definition of “teething element” is “a chewable  
 9 device to assist in the eruption of a baby’s teeth.” (*Id.* at 5:5–15.)

10 The Court finds that Munchkin’s proposed construction of “teething element” is  
 11 supported by the claims themselves and the specification. Unlike the previous two  
 12 disputed terms, the specification includes clear and explicit language that the patentee  
 13 intended the term “teething element” to be construed as Munchkin proposes. In  
 14 addition, Munchkin’s proposed construction does not require the Court to make any  
 15 inferences from the language of the specification. The words used in Munchkin’s  
 16 proposed construction are lifted directly from the specification and clearly describe  
 17 the “teething element.” It is true, as LNC argues, that the term “teething element” is  
 18 meant to be construed broadly. But the Court finds that Munchkin’s proposed  
 19 construction is broad and does not impermissibly narrow the claim term.  
 20 Accordingly, the Court adopts Munchkin’s proposed construction of the term  
 21 “teething element.”

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## V. CONCLUSION

The Court adopts the following constructions of the disputed terms:

Claim Term	Claim Construction
1. “corner”	Plain meaning as discussed in Part IV-A
2. “permanently secured”	Plain meaning as discussed in Part IV-B
3. “teething element”	“an element that is: separate from the flexible fabric material; made from a non-toxic material; and sized and dimensioned to be comfortably inserted and partially retained within an infant’s mouth for teething purposes”

**IT IS SO ORDERED.**

September 12, 2014

**OTIS D. WRIGHT, II  
UNITED STATES DISTRICT JUDGE**